Cri A 223/98

(2) DB (Cri)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061257

APPEAL OF PRISONER

No. 6912 Name श्री भारसिंह

Father's name चितरू, साकिन ग्राम- सुकलीभाठा, थाना- देवभोग,

Residence चिलिया - रायपुर (म०प्र०) Age 19

Sentenced to आजीवन कारावास On 18-12-97

Under section 307 - जुर्माना या उम्रकैद सहित by माननीय पंचम अपर सत्र न्यायाधीश रायपुर (म०प्र०)

S.T. No. 36/97

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 6912 Name श्री भारसिंह S/o चितरू

Confined in केन्द्रीय Jail रायपुर (म०प्र०)

No. 06/विधि/98 Dated 5/1/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अति० पंचम अपर सत्र न्यायाधीश माननीय उच्च न्यायालय म०प्र० जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- S.T. No. 36/97 की प्रमाणित प्रतिलिपी।

Superintendent
Superintendent,
Central Jail, Jailpur. (M.P.)

Date of receipt in ..... office

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

High Court of Madhya Pradesh JABALPUR
Received on 21 JAN 1998
Registration No. 15 Sahakar
Receipt Clerk
High Court, Jabalpur.

No ..... Dated ..... 199.....

Forwarded to the .....

.....

Date of receipt in Appellate Court .....

(P. T. O.)

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. App. 223/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

23.2.2006

Shri R.K. Sharma, Advocate for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J

By this appeal under Section 374 (2) of the Cr.P.C. appellant Shobha Singh has questioned the legality & correctness of judgment of conviction & order of sentence dated 18th December, 1997 passed by learned 5th Additional Sessions Judge, Raipur in S.T. No.36/97 whereby learned Additional Sessions Judge after holding the accused/appellant herein guilty for committing murder of Ghasiram convicted him under Section 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months.

The prosecution case, in brief, is that PW-1 Santosh Ram Yadu, brother of deceased Ghasiram, gave merg intimation (Ex.P-3) to the Police Station Devbhog to the effect that today he went to his in-laws place, at about 9.00 p.m. his cousin Charan came and informed him that Ghasiram has been murdered by Shobha Singh @ Masna. Hearing this, he returned to village and enquired, on which Jabar Singh (PW-11) informed him that he and Ghasiram both were sitting in front of Tarun's shop, at that time Shobha Singh came abusing राउत persons. Ghasiram asked him not to say so, on which Shobha Singh stabbed on the ribs of Ghasiram with some pointed weapon, as a result of which he fell down and died. On receiving this information from Jabar Singh, he went to the place of occurrence and saw that his brother Ghasiram was lying dead in the

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

street in front of the Tarun's shop. Receiving this merg intimation, Shri D.S. Baghel, Station House Officer, Police Station Devbhog registered the F.I.R. Ex.P-1., left for the scene of occurrence and after giving notice (Ex.P-6) to the Panchas prepared the Panchnama (Ex.P-7) of the body of deceased Ghasiram. Clothes of deceased were taken into possession under Ex.P-6. Site plan (Ex.P-8) of the place of occurrence was prepared by the Station House Officer. On production of bamboo stick by Jabar Singh, the same was taken into possession under Ex.P-8. Blood stained soil and plain soil was taken into possession under Ex.P-9 from the place of occurrence. Clothes of deceased i.e. one baniyan, one lungi, piece of lungi, another piece of lungi were taken into possession under Ex.P-10 and it was mentioned that same were stained with blood. During police custody accused Shobha Singh has stated to have been given memorandum (Ex.P-12) and in pursuance of that weapon of offence i.e iron knife was taken into possession under Ex.P-13. Dead body of deceased Ghasiram was sent for postmortem examination under Ex.P-16 to Primary Health Centre, Devbhog, where Dr. Uttam Singh (PW-17) conducted postmortem on the body of deceased Ghasiram and prepared the postmortem report Ex.P-17. Opinion of the doctor was sought by the investigating Officer under Ex.P-19 as to whether the injury found on the body of Ghasiram could be caused by the weapon in question and the doctor opined that injury found on the body of deceased Ghasiram could be caused by the knife in question. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur under Ex.P-21, from where report Ex.P-22 was received.

After completion of investigation, charge sheet was filed against accused Shobha Singh in the Court of learned Judicial Magistrate 1st Class, Gariyabandh, who in turn committed the case to learned Sessions Judge,

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Raipur, from where learned 5th Additional Sessions Judge, Raipur received the case on transfer for trial.

The prosecution in order to establish charge against accused Shobha Singh examined 17 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused Shobha Singh under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated by Jabar Singh (PW-11). Accused Shobha Singh also examined DW-1 Sukhlal in his defence.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

We have heard Shri Sharma, Advocate for accused/appellant and Mr. Shukla, Additional Public Prosecutor for the State/ respondent.

Homicidal death of deceased Ghasiram is not in dispute.

As far as involvement of accused Shobha Singh in committing the crime in question is concerned, the prosecution case is that accused attacked with the knife, which was stuck with a bamboo stick and the prosecution adduced the evidence of PW-6 Tarun, in front of whose shop crime in question was committed, PW-11 Jabar Singh, who was sitting with deceased Ghasiram at the time of incident and PW-14 Rajman, who was also said to be present with Jabar Singh. Rest of the evidence on which the prosecution has tried to connect the accused is recovery of blood stained clothes of ~~deceased~~ accused, recovery of knife in pursuance of memorandum (Ex.P-12) given by accused Shobha Singh.

As far as the evidence of PW-6 Tarun, in front of whose shop the crime in question was committed, is concerned, he has stated that on the fateful day Ghasiram came to his shop to purchase Bidi and he purchased Bidi from him.

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Thereafter, Jabar Singh & Rajman came. In the meantime, Shobha Singh also came. On the street, Shobha Singh & Ghasiram quarreled and Ghasiram raised scream "come-come" on which Jabar Singh & Rajman rushed towards that side and they called him. He also went on the spot, Jabar Singh separated Shobha Singh & Ghasiram. Jabar Singh shown him an iron piece attached with stick and informed that Shobha Singh has assaulted Ghasiram with that weapon and ran away. Ghasiram was lying there, there was injury on the right side of chest of Ghasiram, he was conscious and talking to his family members. Water was provided to Ghasiram and after drinking water he died. In Para-3 of his examination he has stated that Shobha Singh was abusing Ghasiram, Shobha Singh attacked Ghasiram in front of his shop and when Ghasiram raised the scream "save-save" Jabar Singh & Rajman rushed towards that side. Thereafter he locked his shop, came out and saw that Ghasiram was lying on the ground and Shobha Singh was not present on the spot.

If we scrutinize the whole evidence of this witness, it is clear that in fact he has not witnessed the crime. In Para 13 he has clearly stated that after hearing the scream he locked the shop, come out and saw that Ghasiram was lying on the ground and Shobha Singh was not present there. According to the evidence of this witness, on hearing the scream of Ghasiram, Jabar Singh & Rajman rushed towards the side where the crime in question was committed.

PW-11 Jabar Singh has been declared hostile, who has stated that he was smoking Bidi on the shop of Tarun, at that time accused Shobha Singh was coming in the street abusing राउत persons, on which Ghasiram, who was sitting on the cot, asked Shobha Singh to whom you will kill and came on the way. After short interval, he heard scream of Ghasiram ' I am dead'. Shobha Singh & Ghasiram were quarreling, Shobha Singh assaulted Ghasiram with the stick

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stick on his left side of chest and on account of the injury blood was oozing out. Injury was small or big he did not know. He snatched the stick from Shobha Singh and in the meantime, people of vicinity collected. Shobha Singh ran away and Ghasiram died. The police seized that stick from him under Ex.P-8 and thereafter this witness has been declared hostile. Even this witness has not supported the prosecution case that accused attacked Ghasiram with the knife, which was recovered by the police under EX.P-13 on the memorandum of accused and even during his evidence learned Additional Public Prosecutor did not take trouble to confront this witness with the knife in question. He has simply stated that accused assaulted deceased with the stick and the injury, which was found on the body of deceased, admittedly could not be inflicted by stick in question.

Another witness Rajman has been examined as PW-14 and he has also been declared hostile. This witness has stated that the police made enquiry from Shobha Singh and he said that he attacked Ghasiram with the bamboo stick and as such he has not supported the prosecution case regarding memorandum given by the accused and also the recovery. This witness, on cross examination by Additional Public Prosecutor, has stated in Para-4 that after hearing the scream of Ghasiram, he and Jabar Singh reached on the scene and saw that Ghasiram was lying. Jabar Singh snatched the bamboo stick from the hand of Shobha Singh and started saying that he has snatched this stick from Shobha Singh. There was injury on the left side of the chest of Ghasiram, blood was oozing out of it and Ghasiram died on the spot. Therefore, this witness has neither proved the recovery of weapon of offence at the instance of accused nor he has stated that he witnessed the accused assaulting deceased with the knife in question.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी-रजिस्ट्रार के अन्तिम आदेश

Therefore, on the evidence of PW-6 Tarun, PW-11 Jabar Singh & PW-14 Rajman the prosecution has not been able to establish that the accused assaulted the deceased with the knife in question, which was recovered at his instance. In other words, there is no evidence to prove and show that the injury was inflicted by the accused with the help of knife in question. The only evidence available on record is that Shobha Singh and Ghasiram quarreled.

Recovery of weapon of offence at the instance of accused has been proved by the evidence of PW-8 Ratanram and PW-15 D.S. Baghel, Station House Officer, but as per F.S.L. report (Ex.P-22) no blood was found on the clothes of accused and weapon of offence. Therefore, there is no ocular evidence to the effect that the accused attacked the deceased with the knife in question, as such, based on the recovery only the accused cannot be connected with the crime in question as no blood was found on the knife. There is no other evidence on record connecting the accused with the crime in question, therefore, finding of the trial court convicting the accused for commission of offence under Section 302 of the IPC for committing murder of deceased Ghasiram is not based on any legal clinching evidence and as such same cannot be sustained.

In the result, the appeal is allowed. The conviction and sentence imposed on accused/appellant Shobha Singh under Section 302 of the I.P.C. are set aside and he is acquitted of the charge under Section 302 of the IPC. Appellant Shobha Singh be set at liberty forthwith, if not required in connection with any other case.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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